2. As with the mass market, commenters overlook the competitive significance of the emerging carriers in the larger business market.

As demonstrated in the Application and as previously recognized by the Commission, larger business customers are sophisticated purchasers of a wide variety of telecommunications services. See Application at 54 (citing Commission orders); Besen/Brenner First Decl. ¶¶ 73-94. While generally recognizing the unique characteristics of the larger business market, commenters nevertheless attempt to argue that the emerging carriers are disadvantaged in this market because they purportedly lack national ubiquity. See, e.g., SBC at 35-36. Some commenters further claim that the emerging carriers lack adequate sales forces and will be increasingly operating at a disadvantage because of the Commission's recent order on access charges. Id. at 36-37. SBC also argues that the merger will "eliminat[e] . . . rivalry between MCI WorldCom and Sprint," and "shut off" this "engine of innovation." Id. at 33. In fact, as demonstrated below and as this Commission has recognized, emerging carriers are directly and successfully competing for these customers.

a. Commenters' arguments regarding ubiquity for larger business customers are particularly unpersuasive.

As established in the earlier mass market discussion, commenters' allegations that emerging carriers lack ubiquitous coverage are simply unfounded. See supra Section II.B.1. Furthermore, such claims are particularly inapt in the larger business market given the unprecedented build-out of facilities and the usual pattern of network development.

Typically, new carriers establish POPs in (and extend their long haul transmission pipes to) areas where high volume customers reside because the higher volumes (often committed in long-

term contracts) justify the investment.[50] Indeed, far from not competing for these customers, a new carrier's network build-out tends to be geared precisely towards meeting their needs. Moreover, once the capital investment in switches, fiber, routers, and other equipment is made in order to serve larger business customers, carriers can then more fully utilize their networks by deploying remaining capacity (especially in off-peak periods) to serve smaller customers. In fact, this pattern of network development is exactly how MCI WorldCom and Sprint developed their networks. By serving smaller portions of AT&T's existing customers' telecommunications needs (e.g., as a provider of redundant capacity) and by winning bids for new customers, MCI WorldCom and Sprint were able to establish themselves as reputable, competitive alternatives to AT&T.[51] This pattern of network build-out and reputation development has been repeatedly employed by new entrants in local, long distance, wireless, and other markets.

It is interesting to note that one of the more vociferous opponents of this merger, SBC, applied this model to local entry to describe its own "National-Local" out-of-region build-out

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50 The pattern holds for local entry as well. See, e.g., Access Charge Reform, 12 FCC Rcd 15982, ¶ 266 & n.349 (1997) (recognizing that competition will develop "in some places, and for some services, more rapidly than others" as profit-maximizing carriers "naturally seek out those customers and services on which they can generate the most profits"); Implementation of the Local Competition Provisions, CC Dkt. No. 96-98, 1999 FCC LEXIS 5663, ¶¶ 83-84 (rel. Nov. 5, 1999) (FCC 99-238) ("UNE Remand Order") (finding that "facilities-based competition has developed in particular markets (primarily for large business customers in high-density areas)" because these customers typically "generate sufficient revenue to allow the requesting carrier to serve the customer using certain self-provisioned facilities").

51 Larger business customers often employ two or more carriers to maximize leverage, redundancy, and access to unique applications. Petition to Deny of Sprint Corporation, Affidavit of Steven Signoff ¶¶ 11-14, submitted in Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control, CC Dkt. No. 98-141 (filed Oct. 15, 1998).

strategy. See SBC/Ameritech Order ¶¶ 259-262. In attempting to justify its merger with Ameritech, SBC argued that it needed to merge in order to make it economically feasible to pursue certain "anchor tenants" out-of-region. See id. ¶¶ 262-263. Initially, SBC would deploy facilities to serve larger business customers. Id. ¶ 262. These facilities would in turn "facilitat[e] the eventual deployment of voice and data services to small businesses and residential customers within those markets." Id. Accordingly, it would seem particularly disingenuous for SBC to claim that others would not build-out their networks in a similar fashion given the proper economic incentive.

In addition, a carrier does not need to construct its own facilities to extend the reach of its network. The availability of capacity through purchase or swap makes it easy for a carrier to expand its footprint. Long distance bandwidth throughout the country has increasingly become commoditized, as the quantity of available bandwidth has exploded and prices have dropped precipitously, and bandwidth "exchanges" have developed for use by both carriers and large business users. See Business Wire (Denver) at 1 (Dec. 10, 1999). One of these exchanges, Bandwidth Market, Ltd., reports that its "website lists over 300,000 circuits, with a cumulative value of over $1 billion per month." Id. Bandwidth is available between hundreds of cities, from "Abilene, TX to Altoona, PA, Wichita, KS to York, PA, or New York to Los Angeles, London, Prague or Helsinki." Id. Bandwidth Market, Ltd. also serves numerous telecommunications carriers, with some "buy[ing] huge quantities, such as 20 billion bits per second for 20 years on 1,000 mile routes." Id.[52] Others, such as Global Clearing Network, Bandwidth Exchange, The

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[52] Services marketed on Bandwidth Market include Internet access, collocation, voice or data telephone circuits from T1s to OC192, dark fiber, and switched minutes. Bandwidth Market, Ltd. Home Page <www.bandwidthmarket.com/main_body.cfm>.

GTX, Minutes Exchange, and RateXchange, also offer or facilitate the sale and exchange of services such as switched minutes, IP packets, and bandwidth.[53] The market for such "telecommodities" is projected to be $8 billion by 2002.[54]

In sum, a lack of perfect ubiquity does not limit a carrier's ability to compete for larger business customers nationwide. Carriers that lack a POP in a given LATA typically have multiple suppliers from whom they can lease facilities. Alternately, for larger business contracts, carriers may determine that it is economically feasible to deploy their own facilities. Finally, carriers today have an additional option of leasing or swapping bandwidth for specific routes.

b. Emerging carriers do not operate at a disadvantage to existing carriers.

i. Emerging carriers' sales forces have grown substantially in the past 18 months.

Contrary to SBC's claims, see SBC at 35, the emerging carriers have increased their sales forces to market their expanding network capacity to consumers. For example, Qwest's growth in sales force is reflected in its 97.6% increase in its selling, general and administrative ("SG&A") costs for its communications business in 1999 as compared to 1998.[55] Likewise, Global Crossing had a 22.3% increase in SG&A expenditures in 1999, which it attributed, inter alia, to increased

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53 Red Herring, Brian E. Taptich, "B2B Exchanges: Leaders of the Bandwidth" at 204 (Nov. 1999) ("Taptich Article") <www.herring.com/mag/issue72/news-bandwidth.html>.

54 Radio Communications Report, "Online Bandwidth Exchange Expected to Come to Fruition in February" at 20 (Jan. 10, 2000).

55 Qwest Investor Relations, "Qwest Reports Record Revenue and EBITDA for Fourth Quarter and Year-End 1999 Driven by More Than 200% Growth In Internet and Data Revenues" (Feb. 2, 2000) < www.qwest.com/press/story.asp?id=187>; see also Besen/Brenner Second Decl. ¶ 97.

spending to "augment its sales force." In fact, its total employment during that time skyrocketed, increasing from 148 employees in 1998 to 12,000 by year end 1999.[56] Other carriers, including Broadwing (38%) and Level 3 (44%) also increased their SG&A costs in 1999 as compared to 1998.[57] Additional information regarding the emerging carriers' marketing and sales organizations, as well as the recent growth of those operations, is detailed in the attached declaration by Drs. Besen and Brenner. See Besen/Brenner Second Decl. ¶¶ 97-104. The foregoing clearly demonstrates that the emerging carriers are rapidly expanding their marketing and sales operations in order to aggressively market their services to larger business customers.

Moreover, the marketing of long distance is increasingly deriving from sources beyond traditional "carriers." Systems integrators and applications service providers package commoditized long haul transmission capacity along with equipment and/or value-added services without any direct participation by a long distance carrier.[58] These trends, too, work to ensure the vigorously competitive supply of services to large businesses.

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56 Global Crossing, "Global Crossing's Fourth Quarter Revenue Exceeds $1 Billion; Pro Forma 1999 Revenue Tops $4 Billion with Recurring Adjusted EBITDA of $1.2 Billion" (Feb. 18, 2000) (Unaudited Pro Forma Condensed Consolidated Statements of Operations for the Years 1999 and 1998) < www.globalcrossing.com/pressreleases/pr_021800.htm>. The pro forma report accounted for Global Crossing's acquisitions during the reporting period.

57 Broadwing Press Release, "Broadwing Delivers On Its Promises: Building A Strong Base For Accelerating Growth" at 4 (Jan. 27, 2000) (consolidated income statement) <investor.broadwing.com/news/20000127-13630.htm>; Level 3 Press Release, "Level 3 Communications Reports Fourth Quarter Results" at 2 (Feb. 3, 2000) <www.level3.com/Content/1,1233,us/news/newsreleases/2000202q,00.html>. Indeed, during the fourth quarter of 1999, Level 3 added some 300 employees to its communications business, giving it approximately 3,850 employees. Id.

58 See Oracle Corporation, "Oracle Business On Line Expands Globally" at 1 (visited Mar. 15, 2000) <www.oracle.com/businessonline>; Network Services, "Hewlett-Packard and Nortel Networks: A Global Partnership Supporting the Flow of Information" at 1-2

ii. Emerging carriers do not operate, nor will they "increasingly operate," at a cost disadvantage due to the Commission's Fifth Access Charge Order.

SBC's claim that the emerging carriers will be increasingly operating at a disadvantage because of higher prices for special access is wrong. In its Fifth Access Charge Order, the Commission opined that its prior pricing structure for ILECs' special access was not providing competitors cost-based pricing signals.[59] Notwithstanding the fact that regulation may have prevented efficient pricing and thus distorted signals to potential entrants, SBC argued vehemently two months ago that competition for special access services is "thriving." See generally Comments of SBC at 11, Implementation of the Local Competition Provisions, CC Dkt. 96-98 (filed Jan. 19, 2000) ("SBC Access Comments").[60] In support of its claim, SBC stated:

> There are more than 100 carriers engaged in the provision of competitive access services, and both the revenue and market share of these carriers is increasing at an astounding pace. * * * In 1999, [competitive access providers] are projected to have increased [their] market share to approximately 33% of all special access/private line revenue. * * * For sixteen years, CLECs have been laying fiber so that they could provide a competitive special access/private line service to interexchange carriers and large end users.

Id. at 11, 13.

(visited Mar. 15, 2000) <www.hp.com/ssg/network/alliances_nortel.html>; USi GSP, "USi Global Services Platform™" at 1 (visited Mar. 15, 2000) <www.usi.com/usigsp>; IBM Global Services, "IBM Global Services - Total Systems Management Services, Meet Future Needs and Current Demands" at 1-2 (visited Mar. 15, 2000) <www.ibm.com/services/tsm>.

59 Access Charge Reform, 14 FCC Rcd 14221, ¶¶ 60-61 (1999) ("Fifth Access Charge Order").

60 In response to the Commission's fourth further notice of proposed rulemaking and supplemental order in the local competition docket, SBC contended that the Commission should restrict the ability of CLECs to use UNEs to replace special access because special access services are vigorously competitive. SBC Access Comments at 11.

MCI WorldCom has appealed the Fifth Access Charge Order,[61] but for purposes of this merger review, the order remains valid federal law. Applying the Commission's rationale there, one can only conclude that the Fifth Access Charge Order will ensure that special access rates reflect the higher costs incurred to serve more rural areas. See SBC at 38. As a result, under the Commission's reasoning, the order can only accelerate the trend towards competitive pricing identified in SBC's Access Comments. According to the Commission, far from harming emerging carriers, this decision to grant incumbent LECs more flexibility to deaverage special access charges sends a cost-based signal to carriers that will attract efficient entry. See Fifth Access Charge Order ¶ 61. As a result, the Commission must conclude that the Fifth Access Charge Order has the effect of encouraging efficient entry in precisely those rural LATAs where special access charges might increase to better reflect actual costs.[62] SBC has not shown that the emerging carriers will in fact operate under any special disadvantage here.

c. The emerging carriers' rivalry with larger carriers and each other has also fueled innovations for larger business customers.

SBC argues that Sprint and MCI WorldCom are responsible for driving innovation in the long distance marketplace since 1982 and that the merger will "shut off" this "engine of innovation." SBC at 33-34. As demonstrated by the chart below, however, many carriers other than MCI WorldCom and Sprint have been responsible for innovation in the larger business telecommunications marketplace, including several award-winning applications. Moreover, many

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61 MCI WorldCom v. FCC, Nos. 99-1395, 99-1404, 99-1472 (consol.) (D.C. Cir.) (filed Sept. 23, 1999).

62 The Commission has protected against any sudden "rate shocks" by capping permitted annual price increases at 15%. Fifth Access Charge Order ¶ 63.

product innovations have originated with manufacturers seeking to meet the needs of many long distance service providers.

Innovations Since January 1996

Year	*Innovation*	*Company*
Jul-96	Introduced the industry's first SONET ring-based optical interface on a wide-band digital cross-connect system.[1]	AT&T/Lucent Technologies
Aug-96	First company to introduce a network-based, two-way, agent-assisted transaction processing technology for the Internet. (Service allows a user to click on an icon to initiate a telephone conversation with a customer service agent).[2]	AT&T
Feb-97	First interexchange service provider to offer Switched Virtual Circuits (SVCs) on its ATM service.[3]	AT&T
Feb-97	Announced invention of a revolutionary fixed wireless technology, using 10 MHz spectrum, to carry high-speed digital communications directly to most households with more capacity than traditional copper wire.[4]	AT&T
Jul-97	International private line service at 155 megabits per second (offered on US-Japan route).[5]	AT&T (partnering with KDD)
Jul-97	Introduced SoundScan, a technology that makes it easier for people placing calls from noisy locations. Continual adjustments maintain an improved sound level throughout the call -- an industry first available to callers using 1-800-CALL-ATT.[6]	AT&T
Nov-97	Announce trial of a2b music platform, combining compression and encryption technologies from AT&T Labs, to deliver CD-quality music over the Internet.[7]	AT&T
Jan-98	First company to offer real-time, Internet-based phone-to-phone international service on its own global network.[8]	RSL Communications
Jan-98	Pioneered first 45 megabit-per-second hybrid cable/satellite asymmetric link with Telstra Corporation.[9]	Teleglobe/Excel
Jan-98	Industry's first broadcast-quality video link using advanced digital compression technology and ATM high-speed protocol, featuring enhanced picture quality, signal security and almost unlimited bandwidth; sends video formatted in the MPEG-2 4:2:2: standard for HDTV and digital TV.[10]	Teleglobe/Excel
Feb-98	Announces it will provide first nationwide OC-X high capacity private line service.[11]	IXC
Apr-98	First network service provider to complete a transcontinental native IP network.[12]	Qwest
Jun-98	Activation of world's first OC-192 four-fiber SONET (Synchronous Optical Network) ring, which was designed with a highly reliable and secure bi-directional, line switching ring architecture.[13]	Qwest
Jun-98	Williams Network received the top award in the category of backbone bandwidth at the annual SuperComm trade show and conference.[14]	Williams
Jun-98	Introduces the "Ready-Access" Teleconferencing Service, a first-of-its-kind, reservation-free, on-demand conferencing service. (Audio conferencing using an access number and passcode. Innovations in this version include SS7 call routing, scalability to 9600 ports, and complete end-user control via the Internet).[15]	Frontier

Jun-98	First to introduce PC to phone telephony, using the Riparius handset attached to a PC using RSL software.[16]	RSL Communications
Sep-98	Implementation of the first OC-192 fiber optic transmission system for long-haul networks supporting up to 80 gigabits per second.[17]	IXC
Oct-98	Announce "Total Event Management" conferencing service over Williams' proprietary Event Bridge, the first special event service of its kind, which is capable of combining technologies such as ISDN-delivered video conferencing, DS-3 delivered broadcast quality video, satellite video feeds, and H.324 video conferencing. Service received award for Best New Multipoint Conferencing Service from Desktop Video Communications in Oct. 1998.[18]	Williams
Dec-98	Activates OC-48 network, the first coast-to-coast, next generation Internet backbone network to carry both commercial and research community traffic. IXC was awarded the 1999 Infovision Award for innovation in Internet technology (Aug. 1999).[19]	IXC
Dec-98	Announce deployment of ATM network transferring ATM traffic at 2.5 gigabits per second by connecting switches directly to DWDM.[20]	Frontier
Feb-99	AT&T Labs announces research into the use of micromirror technology for optical switching.[21]	AT&T
Apr-99	Announces field trial of IP-over-cable voice and data service using VPN technology to provide remote workers with bandwidth for advanced voice and data services through a cable modem.[22]	IXC
Jun-99	Announces Optical Wave Service that enables wholesale customers to lease individual wavelengths providing "clear" channel OC-48c capacity.[23]	Williams
Sep-99	"1999 Market Engineering Service Innovation Award" from Frost & Sullivan presented to Frontier Videoconferencing for its ability to adopt new technology, develop a well-designed product family, and make significant contributions to the market in terms of service capabilities and reliability.[24]	Frontier
Sep-99	Frontier was presented award for the "Most Innovative Network Service" by Inter@ctive Week for taking the lead in Web and application hosting.[25]	Frontier
Oct-99	Williams receives 1999 InfoVision Award for its advanced optical network architecture.[26]	Williams
Nov-99	Williams, in alliance with Corvis Corporation, announces a field trial of service that pushes the boundaries of optical technology within a commercial fiber optic network to 2.4 terabits per second, with commercial deployment expected as early as the second half of 2000.[27]	Williams
Dec-99	Commercial availability of (3) Voice service, said to be first long distance voice services over end-to-end IP network offering voice quality indistinguishable from traditional networks.[28]	Level 3
Dec-99	First transcontinental IP-based OC-192c link carrying commercial traffic at 10 gigabits-per-second, part of Qwest's rollout of an all-optical OC-192 IP network, which utilizes Cisco Systems' newly-announced multi-terabit routing platform, the 12016 Giga Switch router.[29]	Qwest
Feb-00	Williams announces plan to test and implement an OC-192 service by the fourth quarter of 2000.[30]	Williams

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[1] www.att.com/press/0796/960724.nsa.html, visited March 1, 2000.
[2] www.att.com/press/0896/960827.bsa.html, visited March 1, 2000.
[3] www.att.com/press/0297/970204.bsa.html, visited March 1, 2000.
[4] www.att.com/press/0297/970225.pca.html, visited March 1, 2000.
[5] www.att.com/press/0797/970707.cia.html, visited March 1, 2000.
[6] www.att.com/press/0797/970728.csa.html, visited March 1, 2000.
[7] www.att.com/press/1197/971103.ala.html, visited March 1, 2000.
[8] www.rslcom.com/introduce.html, visited February 28, 2000.
[9] www.teleglobe.com/template/press/presspres.cfm?ilang=eng&itopic=General&itopicclass=News&i Period=Q-1/1998&iPressid=n1998-01-15, visited February 28, 2000.
[10] www.teleglobe.com/template/press/presspres.cfm?ilang=eng&itopic=General&itopicclass=News &iPeriod=Q-1/1998&iPressid=n1998-01-26, visited February 28, 2000.
[11] www.ixc-comm.com/corporate/investors/1998/02-10-98.htm, visited February 25, 2000.
[12] www.qwest.com/press/041398.html, visited February 28, 2000.
[13] www.qwest.com/press/061698.html, visited February 28, 2000.
[14] www.williamscommunications.com/newsroom/newsreleases/1998/061098a.html, visited February 25, 2000.
[15] www.frontiercorp.com/about/aboutfrontier/news/newsFiles/1998629-899211746.html, visited February 28, 2000.
[16] www.rslcom.com/pr604_1.html, visited February 28, 2000.
[17] www.ixc-comm.com/corporate/investors/1998/09-01-98.htm, visited February 25, 2000.
[18] www.williamscommunications.com/newsroom/newsreleases/1998/100798a.html, visited February 25, 2000, and www.williamscommunications.com/newsroom/newsreleases/1998/100798b.html, visited February 25, 2000.
[19] www.ixc-comm.com/corporate/investors/1998/12-14-98.htm, visited February 25, 2000, and www.ixc-comm.com/corporate/investors/1999/08-09-99.htm, visited February 25, 2000.
[20] www.frontiercorp.com/about/aboutfrontier/news/newsFiles/1998127-913058700.html, visited February 28, 2000.
[21] www.att.com/press/item/0,1354,530,00.html, visited February 29, 2000.
[22] www.ixc-comm.com/corporate/investors/1999/04-20-99.htm, visited February 25, 2000.
[23] www.williamscommunications.com/newsroom/newsreleases/1999/060799.html, visited February 25, 2000.
[24] www.frontiercorp.com/about/aboutfrontier/news/newsFiles/199997-936711973.html, visited February 28, 2000.
[25] www.frontiercorp.com/about/aboutfrontier/news/newsFiles/1999915-937409522.html, visited February 28, 2000.
[26] www.williamscommunications.com/newsroom/newsreleases/1999/102699.html, visited February 25, 2000.
[27] www.williamscommunications.com/newsroom/newsreleases/1999/111999a.html, visited February 25, 2000.
[28] www.level3.com/Content/1,1233,us|news|newsreleases|19991213,00.html, visited February 28, 2000.
[29] www.qwest.com/press/story.asp?id=171, visited February 28, 2000.
[30] www.williamscommunications.com/newsroom/newsreleases/2000/022200.html, visited February 25, 2000.

While, as noted in SBC's comments, MCI WorldCom and Sprint have contributed significantly to innovation, the above chart unequivocally demonstrates that they are not the only "engines of innovation" in the telecommunications marketplace today.

d. Emerging carriers are increasingly bidding for and winning high volume, long term contracts for larger business customers.

As noted in the Application, larger business customers are in a unique position to obtain competitive bids from carriers, frequently leveraging one carrier against another. These customers often use consultants and counsel who write and evaluate RFPs and contracts with terms (such as MFN) that assure them access to low-priced, state-of-the-art services. As Doctors

Besen and Brenner explained earlier, "[l]arger business customer transactions typically result from face-to-face negotiations between the buyer and a number of bidders, giving the customer full opportunity to take advantage of its knowledge of available alternatives." Besen/Brenner First Decl. ¶ 73. Moreover, these customers "often use multiple vendors, choosing different carriers to supply different types of services, or to provide service to different areas or groups of offices." Id. Such behavior is important for purposes of evaluating the effects of the merger. See id. ¶ 74. Where, as here, customers award contracts based on such bidding procedures, "[e]conomic theory, as well as experience, indicates that . . . only a relatively small number of competitors is needed to keep prices at competitive levels." Id. Indeed, "once the number of bidders reaches a small number, further increases in the number of bidders have only very small effects on price." Id.

In the larger business market, the validity of this economic theory is borne out by the facts. As the Commission recently acknowledged: "large business . . . customers enjoy the largest number of options for their local exchange and other telecommunications needs."[63]

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[63] Contrary to CWA's claims, not all customers find the proposed merger to be incompatible with competition. In fact, several of the articles CWA attaches to its comments reveal that consumers recognize the procompetitive benefits of the merger. See, e.g., InfoWorld, Stephen Lawson & Nancy Weil, "MCI - Sprint Combo Looms Proposed Mega-Merger Draws Applause But Raises Fears" (Oct. 11, 1999) ("The MCI WorldCom buyout of Sprint proposed last week may bring better service bundles to enterprises in the long run . . . . 'Having another very large provider out there will help keep AT&T's pencil sharp,' said Virgil Palmer, director of telecommunications and networks at Air Products and Chemicals, an AT&T customer, in Allentown, PA."); CMP TechWeb, Mary Mosquera, "Sprint Buy Gives MCI WorldCom More Muscle" (Oct. 15, 1999) ("But consumers and business customers will reap the benefits of a provider with deep pockets and the ability to deliver a broad range of products with more focus on technical quality.").

Industry experts and analysts also believe that the proposed merger is a positive development. See, e.g., A.G. Edwards & Sons, Inc., "Industry Report" (Jan. 3, 2000); Jefferies & Co., Inc., "Industry Report" (Oct. 11, 1999); PaineWebber, "MCI WorldCom

SBC/Ameritech Order ¶ 309. Indeed, SBC has insisted elsewhere that competition for larger business customers is intense. In its Texas Section 271 application, SBC's economists confirmed that "[l]arge business customers have benefited greatly from the new competition in the long distance business . . . . As the FCC has observed, large customers now solicit proposals from multiple vendors and negotiate terms directly with the interexchange carriers."[64] SBC further acknowledged that "price reductions have been dramatic: the average charge for a minute of long-distance service for a large corporation appears to have fallen by more than 80 percent (in nominal terms, and even more in inflation-adjusted dollars) since 1983." Kahn/Tardiff Aff. ¶ 23.

The Commission has recognized that "the marketplace [provides] the most persuasive evidence of the actual availability of [competitive] alternatives as a practical, economic, and operational matter."[65] Here, the marketplace speaks volumes. As illustrated in the Appendix attached to the Besen/Brenner Second Declaration, emerging carriers are not only offering these services, they have won considerable numbers of larger business contracts since 1996. See Besen/Brenner Second Decl. ¶¶ 87-91 & Appendix. The Appendix, drawn from publicly available sources, is only a sample of the kinds of business being won by these carriers. Moreover, even where MCI WorldCom or Sprint has emerged as the winning carrier, the bidding process and outcomes have reflected vigorous competition among all of these companies. See id. ¶ 87.

Inc." (Oct. 14, 1999); Presentation of Tod A. Jacobs, Senior Telecommunications Analyst, Sanford C. Bernstein & Co., Inc., Before the Senate Judiciary Committee Hearing on the MCI WorldCom/Sprint Merger (Nov. 4, 1999).

64 Affidavit of Kahn/Tardiff ¶ 22, attached to Application of SWBT to Provide In-Region, InterLATA Services in Texas (filed Jan. 10, 2000) ("Kahn/Tardiff Aff.") (citing Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, ¶ 38 (1991)).

65 UNE Remand Order ¶ 66.

As demonstrated by the number, dollar amount, and duration of these contracts, emerging carriers are clearly having a sustained and increasingly substantial effect on competition. These contracts range in size from several tens and hundreds of thousands of dollars to $700 million, and for durations up to 25 years. See id. ¶ 88 & Appendix. As Drs. Besen and Brenner note, a number of the contracts are with important buyers such as Ford Motors, Intel, Delta Air Lines, Nortel, Fox, Turner Broadcasting, and Walgreen. Id. ¶ 89. Indeed, Qwest reports that it "is providing service to 40 of the top 50 Fortune 500 companies, and that contracts secured with major national and multinational corporations increased in 1999 by more than 80 percent over 1998." Id. (citation omitted). These facts unequivocally demonstrate that larger business customers are willing to choose the emerging carriers for substantial portions of their telecommunications requirements. See id. ¶¶ 88-89 & Appendix. Similarly, the range of services is quite broad, including, among other services, voice, frame relay, ATM, private lines, dark fiber, Internet-protocol-based virtual private networks, and enhanced web hosting and security services.[66] As a result, the emerging carriers are clearly "able to meet a wide range of the needs of their larger business customers." Id. ¶ 90.

e. The merger will not reduce competition in telecommunications relay services.

In late-filed comments in this proceeding, Maryland Relay argues that the merger of MCI WorldCom and Sprint will have a "detrimental effect" on the competitive provisioning of Telecommunications Relay Services ("TRS"). Maryland Relay at 1. Maryland Relay's argument

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[66] Id. ¶ 90 & Appendix. The sampling also evidences the ability of emerging carriers to provide ATM and frame relay services, in direct contradiction to SBC's claims. See Section II.D.1., supra.

is without merit. Maryland Relay does not contend that the merger will have a "detrimental effect" on the provision of competitive TRS to end users who must utilize relay centers to meet some or all of their communications needs. Nor could it make a credible argument in this regard since end users will continue to be able to choose among a plethora of entities for TRS. Indeed, as the Commission recently reiterated, all common carriers are required by Section 225 of the Act to provide TRS throughout the areas in which they offer service. See Public Notice (rel. Sept. 14, 1999) (FCC 99-1871).[67]

Rather, Maryland Relay's concern here appears to be that the merger will further limit the number of TRS vendors who will compete to operate the TRS center in a particular state. In support of this claim, Maryland Relay claims that there are only four TRS vendors that currently operate in more than one state and "most states only receive bids from one or two vendors when a Request for Proposal is released." Maryland Relay at 1. Such concerns are unfounded. Based upon Interstate TRS Fund records, there will be ten entities post-merger that operate TRS centers. NECA Report, Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Dkt. No. 90-571. All of these firms are potential participants in the bidding process in a particular state,[68] and recent trends confirm that competition for state TRS contracts is strong.[69]

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[67] Indeed, TRS providers are "a diverse group"; in addition to interexchange carriers, TRS is offered by "large and small local exchange carriers, and not-for-profit and for-profit associations." NECA Interstate TRS Fund Payment Formula and Fund Size Estimate at 4, Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Dkt. No. 90-571 (filed Oct. 1, 1998).

[68] Nevertheless, the number of bidders for a state contract depends primarily upon the number of restrictions a state seeks to impose on the winning vendor. For example, a state that insists the vendor locate a TRS center in-state even though only a small number

E. RBOC Entry Also Ensures That The Merger Will Not Harm Long Distance Consumers.

As demonstrated above, the long distance business is and will continue to be robustly competitive following the merger even if the RBOCs never fulfill their obligations under Section 271 to gain interLATA entry. However, it is more likely than not that the RBOCs will gain Section 271 approvals and offer interLATA service to a substantial number of potential customers nationwide within the two-year time frame established by the Merger Guidelines. This market fact should be accounted for in the merger analysis. See Merger Guidelines § 3.0 ("A merger is not likely to create or enhance market power or to facilitate its exercise, if entry into the market is so easy . . . . Entry is that easy if entry would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern."). The Application demonstrated that the anticipated entry of the RBOCs into interLATA services qualifies under these criteria. Application at 52-53. SBC tries to dispute this showing by arguing that "widespread" RBOC entry is required to constrain long distance prices and that such entry is not "sufficiently imminent" to be an effective constraint. SBC at 21-25. SBC is simply incorrect, and its arguments are contrary to its own advocacy.[70] RBOC entry need not be nationwide to have

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of its residents will utilize TRS is likely to attract fewer bidders than a state that allows the vendor to handle the state's TRS calls through a regional center located in another state.

[69] North Carolina was able to choose its TRS provider from a pool of four bidders while Florida selected its next provider from among three vendors. See "Request for Proposal to Provide a Telecommunications Relay Service System in Florida" (Fla. RFP No. 991222-TP) (issued Oct. 7, 1999); "Telecommunications Relay Service" (N.C. RFP No. 901315) (issued May 12, 1999) Moreover, three entities bid on the new TRS contract being awarded by Texas. See "Request for Proposal to Provide Telecommunications Relay" (Tex. RFP No. 20283) (issued Nov. 5, 1999).

[70] For example, seeking to demonstrate that its entry into the interLATA business in Texas would be procompetitive, SBC stated that "many industry analysts believe that the major

effect outside of an entering RBOC's interLATA service area, and further, RBOC entry in a significant number of states is sufficiently imminent to meet the DOJ Merger Guidelines' requirement of entry within two years.

1. RBOC entry need not be nationwide to have procompetitive effect.

SBC does not and cannot challenge the efficacy of Section 254(g)[71] as a general matter; the Commission has steadfastly resisted requests for modifications or waivers of this requirement.[72] Nor does SBC argue that Section 254(g) will not give national effect to competition for the provision of stand-alone interstate service. As described more fully below, RBOCs providing interLATA service in a few significant states will be an effective competitive constraint on long distance pricing because a small number of states account for a disproportionate share of the long distance business, whether measured in access lines or minutes of use. RBOC reductions in interstate stand-alone long distance prices in these states would

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interexchange carriers' recent price reductions for higher-volume callers are a response to imminent Bell company entry." SBC Texas 271 Application at 53-54, Application of SWBT to Provide In-Region, InterLATA Services in Texas, CC Dkt. No. 00-4 (filed Jan. 10, 2000) ("SBC Texas 271 Application"). These price reductions by the IXCs were and are available nationwide, not merely in New York or Texas.

71 See 47 U.S.C. § 254(g) ("Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.").

72 See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace, 12 FCC Rcd 934, ¶ 10 (1997).

compel national IXCs to lower their stand-alone interstate offerings. Section 254(g) would require that these reductions be made available nationwide.[73]

SBC claims that, if RBOC entry occurs only in a "handful" of states, Section 254(g) of the Act will not produce nationwide effects because IXCs will target their competitive responses by bundling interLATA service with intraLATA or local service and offering discounts on the package. SBC at 21-23. (Of course, this trend toward packaging is precisely what the Application predicts for many competitors.) Nevertheless, SBC concedes that once RBOC entry occurs in more than this "handful" of states, it will indeed produce nationwide effects. See SBC at 22 (IXCs will target their competitive responses "at least until the RBOCs are granted section 271 relief for a substantial number of RBOC lines"); id. at 21 (RBOC entry not a constraint "[w]ithout entry in numerous states, covering a substantial percentage of the nation's population"). SBC's economic consultant, Dr. Hausman, states that "once the BOCs become effective competitors in states containing a significant proportion of the U.S. population they should be able to constrain, to some extent, post-merger price increases, under current federal regulation." Hausman Decl. ¶ 33 (apparently agreeing with the Applicants' observation that entry in very few states can have precisely this constraining effect).

As observed in the Application, RBOC entry in only four states, New York, Texas, California, and Florida, would indeed be "substantial," accounting for more than 33 percent of all originating interLATA toll traffic nationwide.[74] Those four states also account for 34 percent of

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[73] Because RBOC entry affecting a significant number of lines will have nationwide effects, the relevant geographic market in which to examine the merger's effects remains national in scope.

[74] See Statistics of Communications Common Carriers, FCC, Table 2.6 (rel. Dec. 31, 1999) ("1999 Statistics").

all U.S. switched access lines.[75] Furthermore, since the Application, the RBOCs have identified 12 states for which they plan to file Section 271 applications at the FCC by the end of the third quarter of 2000 -- that is, very shortly after the time this merger is scheduled to close and far ahead of the relevant two year time frame.[76] These 12 states, when combined with Texas and New York, account for approximately 54 percent of interLATA minutes nationwide,[77] and approximately 55 percent of total U.S. switched access lines.[78] Numerous other states are scheduled by the RBOCs for Section 271 filings before the end of this year. Section 271 approvals for even a portion of these states clearly encompass "a significant portion of the U.S. population," and thus would, as Dr. Hausman concedes, "be able to constrain [hypothetical]. . . post merger price increases." Hausman Decl. ¶ 33.

By insisting that RBOC interLATA entry can have effects solely in those states where Section 271 approval has been granted, SBC's argument curiously implies that RBOC entry will not occur at all out-of-region, a proposition certainly inconsistent with SBC's commitments to the Commission. It is also wrong: Bell Atlantic in fact announced that its efforts in New York will

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75 See id., Table 2.5.

76 See Telecommunications Reports, "OSS Testing Draws CLEC Fire; Bells Plan InterLATA Relief Bids" at 14-15 (Feb. 14, 2000). The 12 states identified are Connecticut, Massachusetts, New Jersey, Pennsylvania (Bell Atlantic), Georgia, Florida (BellSouth), California, Missouri, Oklahoma, Kansas, Arkansas (SBC), and Arizona (U S West).

77 See 1999 Statistics, Table 2.6. Entry in only four of these twelve states (California, Florida, New Jersey, and Pennsylvania) plus New York and Texas would account for approximately 39 percent of interLATA minutes. See id.

78 See id., Table 2.5. Entry in only four of these twelve states (California, Florida, New Jersey, and Pennsylvania) plus New York and Texas would account for approximately 43 percent of total U.S. switched access lines. See id.

include the provision of interLATA services to businesses both within New York state and out-of-region.[79] Thus, because RBOCs will begin to offer interLATA services from out-of-region states as they obtain Section 271 approval in-region, the nationwide effects of their entry is all the more apparent.

2. The timing of Section 271 approvals and RBOC entry are within the RBOCs' control.

SBC's argument that RBOC entry will not be "timely" within the meaning of the Merger Guidelines (Section 3.2) ignores its (and other RBOC) statements to the contrary. SBC seeks to support this claim by blaming the regulatory process for the lengthy time SBC has taken to make serious efforts to comply with Section 271.

SBC should not be heard to denigrate the Section 271 process simply because the Commission properly rejected RBOC applications in the past that clearly did not satisfy the statutory requirements. The timing of RBOC entry has, since the passage of the 1996 Act, always been within the control of the RBOCs. Of course the Commission should not grant Section 271 applications (and parties such as Sprint and MCI WorldCom will continue to oppose Section 271 applications) until the checklist is met and local markets are open to competition. But the question of when Section 271 applications will be granted depends on the willingness of the RBOCs to comply with the statute (witness SBC's characterization of "competitive local markets" as a "supposed" condition of RBOC entry, SBC at 25). Given Bell Atlantic's successful

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[79] News Release, "BellAtlantic Creates 'One Singular Sensation' for New York Businesses" (Mar. 14, 2000) <www.ba.com/proactive/newsroom/release.vtml?id+21043>.

application for interLATA authority in New York, there can be no excuse for failing to understand the requirements for in-region entry.[80]

Thus, SBC's claim that RBOC entry in response to an increase in long distance prices will not occur within the two year time provided for in the Merger Guidelines is simply not credible. As noted above, the RBOCs have publicly represented that they will file Section 271 applications for twelve states at the FCC before the end of the third quarter of 2000.[81] Any number of these applications (or all of them) could be granted if the RBOCs choose to take the achievable steps set out in the Commission's decision approving the Bell Atlantic New York application.

3. The RBOCs' advantages make their entry upon Section 271 approval immediate and significant.

Once an RBOC gains Section 271 approval in a state, its entry will be both immediate and "sufficient in its magnitude, character and scope" as required by Section 3.0 of the Merger

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[80] SBC further attempts to project its longstanding unwillingness to comply with Section 271 upon the Applicants by mischaracterizing their prior statements. SBC claims that Sprint has described the prospect of long distance entry as "highly contingent" and "remote." SBC at 24. However, Sprint in fact stated that the much-touted "national-local" strategy was highly contingent and remote because it hinged on nationwide Section 271 compliance. Petition to Deny of Sprint Communications Co. L.P. at 54, Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control, CC Dkt. No. 98-141 (filed Oct. 15, 1998). Similarly, MCI WorldCom described SBC's California PUC application as "premature" because Pacific Bell "fell well short of meeting the [Section 271] checklist requirements." Press Release, "MCI WorldCom Says PacBell's "271" Application Is Premature" at 1 (July 16, 1999). In both cases, the focus is on compliance with Section 271 and SBC's recalcitrance in that regard, not on whether or when SBC can achieve compliance and entry once it so desires. Similarly, the Declaration of Daniel Kelley and Robert Mercer (Application, Attachment A ¶ 71) stated that it will take a long time for "local markets [to] become competitive." It did not state that it would necessarily take the RBOCs a long time to meet the checklist and gain Section 271 authority. That, as discussed above, is and has always been uniquely within the control of the RBOCs.

[81] See discussion at Section II.E.1., supra.

Guidelines. The recent entry of Bell Atlantic in New York exemplifies the advantages of RBOCs generally in the interLATA telephone business, documenting that RBOC entry will be timely and significant well within two years from consummation of this merger.

Upon receiving Section 271 authority on December 22, 1999,[82] Bell Atlantic initiated residential service throughout the state a mere 14 days later on January 5, 2000.[83] Bell Atlantic has stated that it aims to acquire one million long distance customers by the end of 2000 (roughly 15% of New York presubscribed lines) and projects that it will obtain an overall 30% residential market share and $2 billion in revenues within five years.[84] Since entering, Bell Atlantic has reported that it has signed up more long distance residential subscribers in New York than expected, and is "on track" to meet its year-end goal of one million residential subscribers.[85] Bell Atlantic last week announced the commencement of its provision of long distance service to business customers, with additional services to rollout second quarter this year, and with a projected 20-25% business market share within five years.[86]

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82 See Application by New York Telephone Company, Bell Atlantic Communications, Inc., NYNEX Long distance Company, and Bell Atlantic Global Networks, Inc., for Authorization To Provide In-Region, InterLATA Services in New York, CC Dkt. No. 99-295, Memorandum Opinion and Order (rel. Dec. 22, 1999) (FCC 99-404) ("New York Order").

83 News Release, "Bell Atlantic Long Distance Plans Beat Competitors; Consumers Save 10 to 50 Percent on Long Distance With Bell Atlantic" (Jan. 4, 2000) <www.ba.com/nr/2000/Jan/20000104001.html>.

84 Communications Daily, Mary Greczyn, "Bell Atlantic Rate Plans Tackle N.Y. Long Distance Market" at 2 (Jan. 5, 2000).

85 See The Washington Post, "Bell Atlantic," Digest at E8 (Feb. 8, 2000).

86 News Release, "BellAtlantic Creates 'One Singular Sensation' for New York Businesses" at 2 (Mar.14, 2000) <www.ba.com/proactive/newsroom/release.vtml?id+21043>.

Bell Atlantic's experience in New York to date illustrates that all of the BOCs are poised to enter interLATA long distance with a variety of assets, including long distance capacity and captive local ratepayer relationships, among others. For interLATA transmission capabilities, these firms either have already built in-region networks and/or have gained access through contracts to rock-bottom wholesale rates.[87] While the RBOCs have provided very little information as to the reach and capacity of their in-region transmission networks (no doubt due to the inappropriateness of using local ratepayer funds for their construction), some occasional insights have been offered. For example, in September 1996, Bell Atlantic indicated that it was building an in-region long distance network at nominal cost and that it intended to complete its network in 1997.[88] More recently, Bell Atlantic CEO Ivan Seidenberg has stated that Bell Atlantic is building a "whole new, state-of-the-art long distance network based on the very fastest ATM, IP-compatible technologies."[89] This "state-of-the-art network is operational in New York

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87 See, e.g., Kahn/Tardiff Aff. ¶ 37 ("Within the last few years, SBC, NYNEX, Bell Atlantic, Ameritech, BellSouth and GTE have entered into agreements with such IXCs as AT&T, Sprint, and LDDS WorldCom to resell their long-distance services, at prices in the 1-2 cents per minute range."); see also PaineWebber, Eric A. Strumingher, "No Scorched Earth Approach to Long Distance" (Jan. 5, 2000) (noting Bell Atlantic's ability to obtain "cheap" long distance transport).

88 Telecommunication Reports, "Bells, GTE Lay Out Marketing Strategies, Swap Success Stories at New York Conference" at 9 (Sept. 23, 1996).

89 See Bell Atlantic News Release, "Local Exchange Carriers' Entry into Long Distance - Impact on the Development of Advanced Technology," speech to be delivered by CEO Ivan Seidenberg (Feb. 2000) <www.ba.com/proactive/newsroom/release.vtml?id=20143>.

and will be turned on in other [in-region] states as the company receives long distance relief there."[90]

Similarly, SBC claims that "only SBC will have all the pieces to provide end-to-end service" and that "[o]ur network combined with the long-haul network of Williams, which has one of the newest and highest-quality networks in the world, will allow SBC to offer both a first-class network and the breadth of reliable and advanced products and services that customers want."[91] Long distance authority is the only missing piece for SBC, "which is just around the corner," according to SBC.[92]

Perhaps the RBOCs' most important advantage is their ability to leverage their substantial and persisting market power in the provision of local telephone and exchange access services. Indeed, ILECs account for 96 percent of local service revenues and approximately 97 percent of

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90 See News Release, "Bell Atlantic Creates 'One Singular Sensation' for New York Businesses" at 3 (Mar. 14, 2000) <www.ba.com/proactive/newsroom/release.vtml?id=21043>.

91 Project Pronto at 4 (statements attributed to SBC CEO Edward E. Whitacre, Jr.). Interestingly, SBC announced last month that it would sell Ameritech's in-region long distance fiber network to Williams. Unless one is to assume that SBC is behaving irrationally, this sale indicates a high level of confidence on the part of SBC that it will have guaranteed access to all of Williams nationwide facilities as it gets 271 approvals. SBC News Release, "Williams to Acquire Ameritech Long-Distance Assets" (Feb. 29, 2000) <www.sbc.com/News-Center/Article.html?querytype=article&query=20000229-01>.

In addition, upon Section 271 approval Qwest's national network will be available to U S West via merger, and apparently to BellSouth through contract and partial ownership.

92 Project Pronto at 3 (remarks attributed to James D. Gallemore, SBC Executive Vice President of Strategic Marketing and Planning).

switched access lines nationwide.[93] This manifest market power gives the RBOCs several distinct advantages as long distance competitors.

RBOCs have existing carrier-customer relationships with all but a very few of the potential residential customers in any given area they serve. This provides a unique, low-cost customer service sales channel that other competitors cannot replicate. See Besen/Brenner Second Decl. ¶ 64. As existing customers make calls to the RBOC with regard to their existing service or to initiate service, they can be offered the RBOCs' long distance services and packages of services. As noted in the Application, the RBOCs also enjoy substantial brand name recognition.[94]

Moreover, the bills issued today by RBOCs for local service are highly efficient vehicles for their long distance affiliates' billing. The RBOC already has all the customer information it needs to prepare and process the bill, the software required to track the customer's long distance usage is already in place, and delivery of the bill (by mail or otherwise) is already arranged and paid for. Thus, the RBOC's true marginal cost for long distance billing is relatively small.[95] Nonetheless, RBOCs recently have dramatically increased the unregulated rates charged to long

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93 See "Trends In Telephone Service," Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, at 9-1 (Sept. 1999).

94 See SBC Texas 271 Application at 53 ("Southwestern Bell has a strong brand name that immediately will make it a real competitor to the three major incumbents"). While brand is not particularly important to consumers who regard long distance service as a commodity and therefore tend to switch to the long distance provider offering the best price, brand can be an important factor for selection of a long distance provider for some consumers. For these consumers, the RBOCs are absolutely correct that brand is an important advantage.

95 See Kahn/Tardiff Aff. ¶ 39 (because the RBOCs already serve most residential customers in-region, "the incremental customer costs of adding long-distance to their present mix of services would be very small") (emphasis in original).

distance companies for third-party billing and collection. Consequently, the RBOCs will enjoy an even greater cost advantage in providing billing and collection services. Even if the RBOC interLATA affiliate pays the same inflated rate as third party competitors, the RBOC is merely taking money out of one pocket and putting it in another.

Similarly, local exchange access charge payments by RBOC long distance affiliates are in effect internal transfers for most residential customers, a quite profound competitive advantage and potential anticompetitive opportunity. Indeed, because access charges still do not accurately reflect the cost of providing access, the RBOC can engage in prize squeeze tactics by offering long distance service at rates that recover its true costs (including true access costs) while charging excessive access rates that prevent competitors from doing so.

F. The Arguments Against The Merger Based Upon Stock Price Movements Are Erroneous.

Relying on the Carlton/Sider declaration, SBC alleges that an analysis of stock prices following the merger announcement indicates that long distance prices will rise as a result of the merger of MCI WorldCom and Sprint. SBC at 11. As demonstrated in the attached Declaration of Frederick R. Warren-Boulton and Serdar Dalkir ("Warren-Boulton/Dalkir Decl.") (attached as Exhibit 3), however, a properly conducted analysis of the relationship between the probability that the merger will occur and the share prices of rivals establishes that the merger has had no significant effect on the share prices of rivals. As concluded by Drs. Warren-Boulton and Dalkir, "[t]here is thus no support for any inference that the merger could be expected to result in higher prices for long distance." Id. at 3, 15.

Carlton/Sider reach their conclusion as the result of a basic error; specifically, their analysis uses an "event window" (October 5 and 6, 1999) in which no significant "event" actually